IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.160 OF 2005

Vilas Kailas Joshi ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr.Filji Fedrick for the Applicant
Mr.K.V.Saste,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : JUNE 9,2005.

P.C.:

1. Rule. Learned A.P.P. waives service. By Judgment and Order dated 30th June 1993 the Petitioner was convicted by the learned Judicial Magistrate (F.C.),Satana, District Nashik of offence punishable under Section 420 of Indian Penal Code. The Petitioner preferred an Appeal before the Appellate Court against the Judgment and Order of the Trial Court. The Appeal was dismissed for default on 29th September 1995. During the pendency of the Appeal the Petitioner was enlarged on bail. The case of the Petitioner is that he was not aware about the dismissal of the Appeal and he came to know about the dismissal of the Appeal only after he was arrested on 11th March 2005. Therefore, the Petitioner filed an Application for restoration of the Appeal in the Court of Additional Sessions Judge at Malegaon,Nashik which came to be dismissed on 19th March 2005 as not maintainable. Thereafter, the Petitioner approached this Court by filing Criminal Application which was disposed of on 13th April 2005 with

liberty to the Applicant to seek relief claimed in the Application, in the proposed revision application to be filed for challenging the order of dismissal of the Appeal. The present Application has been filed for challenging the order by which the Appeal preferred by the Petitioner was dismissed for default.

2. The learned Counsel appearing for the Applicant submitted that after the conviction the Petitioner was thrown out of the family house by members of his family. As the Petitioner lost his source of income, he started working at Saputara, Gujarat. He entered into wedlock with a Hindu girl. The Petitioner came to know about the dismissal of the Appeal only after he was arrested on 11th March 2005 as a result of cancellation of protection granted during the pendency of the Appeal. He pointed out that the Petitioner has been convicted to undergo R.I. for one year and from 11th March 2005 he is already in jail. He therefore submitted that the order dismissing the Appeal may be quashed and set aside and the Petitioner may be enlarged on bail. The learned A.P.P. opposed the Revision Application and submitted that the Appeal preferred by the petitioner against the order of conviction has been dismissed for default in the year 1995 and after dismissal of the Appeal, the Applicant was taken in custody on 11th March 2005.

3. Considering the facts and circumstances of the case an opportunity deserves to be granted to the Applicant as his

Appeal against conviction was not heard on merits. His Advocate was absent when the Appeal was called out. In so far as the prayer for grant of bail is concerned, the said prayer will have to be made before the learned Sessions Judge as the Appeal is being restored.

4. Hence I pass the following order :

i) The impugned Judgment and Order dated 29th September 1995 passed in Criminal Appeal No.5 of 1993 is quashed and set aside and the Criminal Appeal No.5 of 1993 is restored to the file of learned Additional Sessions Judge, Malegaon, District Nashik.

ii) It will be open for the Petitioner to apply for appropriate relief including relief of grant of bail before the learned Additional Sessions Judge and if such application is made, the learned Additional Sessions Judge will dispose of the same as early as possible.

iii) Revision application is disposed of in above terms.

JUDGE